* THE HON'BLE SRI JUSTICE V.ESWARAIAH

\+ WRIT PETITION No.14672 of 2006

% 06.02.2007

Between:

N.Mahender Rao

...Petitioner

And:

$ The Government of A.P., reptd
by its Principal Secretary, Revenue
(Excise) Department,
Hyderabad and two others.

...Respondents

! Counsel for the Petitioner: Mr. P.Naveen Rao

^ Counsel for the Respondents: Government Pleader
for
Prohibition and Excise

< Gist:

> Head Note:

? Cases referred:

NIL

THE HON'BLE SRI JUSTICE V.ESWARAIAH

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ORDER:

This writ petition is filed seeking to quash the proceedings of the second respondent in Cr.No.1771/2005/CPE/G4, dated 04.01.2006 and consequently, to direct the respondents to release the lease amount of Rs.4,10,000/- with interest at 18% per annum from the due date till the date of payment for the non-business period and with all consequential benefits.

The petitioner was the successful auction purchaser in the auction conducted on 30.06.2005, for the sale of Indian liquor and foreign liquor by a retail outlet in respect of the outlet notified in Ward No.3 of Karimnagar Municipal Corporation on yearly lease amount of Rs.19,18,000/-. It is stated that though the retail outlet was notified in Ward No.3, he had submitted an application seeking permission to shift the retail outlet from Ward No.3 to Ward No.10 at House bearing No.3-3-142/1, Karimnagar Municipality. The said application of the petitioner was enquired into and

the Prohibition and Excise Superintendent, Karimnagar, vide his letter dated 02.07.2005 recommended to the Commissioner of Prohibition and Excise to consider his request. Accordingly, the Commissioner of Prohibition and Excise vide his proceedings dated 09.09.2005 permitted the shifting of the retail outlet from the notified place of Ward No.3 to Ward No.10 at the aforesaid premises. Thereafter, licence has been granted to the petitioner on 12.09.2005 for the lease period from 01.07.2005 to 30.06.2006.

Now, the grievance of the petitioner is that though the lease period is from 01.07.2005 to 30.06.2006, admittedly, licence was issued to him only on 12.09.2005 and therefore, he is not under legal obligation to pay the proportionate lease amount from 01.07.2005 to 11.09.2005 i.e., prior to the grant of licence. It is stated that he made a representation to the second respondent-Commissioner of Prohibition and Excise, Hyderabad, for remission of the lease amount for the aforesaid non-business period, but, the same was rejected by the impugned order dated 04.01.2006. The petitioner questions the said order and consequently, seeks the relief to refund the proportionate lease amount for the aforesaid non-business period.

A counter has been filed on behalf of the respondents stating that as per the auction conditions at para XX of the Auction Notification, the auction purchaser shall obtain the licence within seven days by duly submitting the Bank Guarantee/F.D.R and by

enclosing the counterpart agreement as referred to in Rule 22 of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short 'the Licence Rules') and also complete all other formalities contemplated under Rules 17 to 19 of the Licence Rules within the specified time and obtain the licence thereof and if he fails to do so, the lease is liable to be cancelled. The petitioner instead of obtaining a licence, requested permission to shift the shop from one Ward to another and the same was permitted. Therefore, the delay in granting licence to him cannot be attributed on the department. It is further stated that as per Rule 27 of the Licence Rules, the successful tenderer shall select suitable premises for the sale of Indian liquor and foreign liquor within the Municipal Corporation/Municipality/ Village/Town/City or Area/ Locality as notified in the District Gazettee and shall obtain the licence within seven days from the date of knocking down of the shop duly complying with all other formalities. It is stated that since the petitioner has not complied with the same within the specified time, he is not entitled for any remission of the lease amount.

The only question that arises for consideration in this writ petition is as to whether the petitioner is entitled for any remission of the lease amount?

Admittedly, the auction conducted in respect of a retail outlet in Ward No.3 is for the lease period from 01.07.2005 to 30.06.2006. It is the duty of the auction

purchaser to select a suitable premises and comply with all the formalities and then obtain the licence. In spite of complying with all the formalities, if there is any delay attributable to the licencing authority, no doubt, in a given case, the question of granting remission of lease amount can be considered.

Under Section 20 (1) of the A.P. Excise Act, 1968 (for short 'the Act'), the District Magistrate is empowered to order to close down the shop for such time and for such period for preservation of the public peace. In a given circumstance, under Section 20(3) of the Act, the licensee shall not, on account of the closure of his shop under Section 20 of the Act, be entitled to any compensation except to the refund of such licence fee paid by him in respect of a shop in proportionate to the period during which the shop is required to be kept closed under Section 20 of the Act.

Admittedly, in the instant case, there is no such order passed under Section 20 of the Act directing the petitioner to close down the shop. The petitioner is under the statutory duty to select a suitable premises by duly complying with all the formalities and obtain the licence within seven days from the date of knocking down the retail outlet in respect of Ward No.3 of Karimnagar Municipality, but he has failed to perform his duties and obligations. After becoming the successful auction purchaser only, he has made an application stating that no suitable premises is available at Ward No.3 of Karimnagar Municipality and

accordingly, requested to permit him to locate the retail outlet at Ward No.10. In fact, if any retail outlet was notified at Ward No.10, the petitioner would not have been permitted to shift his retail outlet from Ward No.3 to Ward No.10. However, as no retail outlet was notified at Ward No.10, the request of the petitioner was considered and he was permitted to shift the retail outlet from Ward No.3 to Ward No.10 of Karimnagar Municipality.

In fact, there is no provision under the Act or the Licence Rules entitling the petitioner to seek remission of the proportionate lease amount for the said period. Therefore, merely because there was delay in granting the licence by considering the application filed for shifting, the petitioner is not entitled for remission of the lease amount for the aforesaid non-business period.

In view of the aforesaid facts and circumstances, I am of the considered opinion that the petitioner is not entitled for any relief as sought for in the writ petition.

The writ petition is devoid of any merits and is, accordingly, dismissed. No order as to costs.

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(V.ESWARAIAH, J)

06.02.2007
Note:
L.R Copy to be marked.
B/o
DR